

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

LINDA BANNING, et al.,

Plaintiffs,
v.

Civil Action No. 10-3752 (KSH)

DEUTSCHE BANK, et al.,
Defendants.

OPINION and ORDER

Katharine S. Hayden, U.S.D.J.

Deutsche Bank has filed a motion for “joinder” [D.E. 10] that the Court deems to be an improperly labeled motion to dismiss the one federal count in plaintiff’s complaint asserted under the Fair Debt Collections Practices Act (“FDCPA”). The remaining defendants have moved to dismiss plaintiff’s state claims [D.E. 9].

The motion directed to the state law claims is denied without prejudice to being renewed in the event that plaintiff’s federal claim survives.

As to Deutsche Bank’s motion, Deutsche Bank provides a legal analysis that is based on a New Jersey foreclosure statute. Plaintiffs’ theory on the federal claim, which appears in the opposition brief, focuses exclusively on the text in one document, a Notice of Intent to Foreclose issued by Deutsche Bank’s servicing agent, HomEq. In the reply brief, Deutsche Bank abandons the analysis in the moving brief and offers a single paragraph arguing that nothing in the FDCPA prevents a servicing agent from acting on the principal’s behalf.

Such inadequate briefing by a moving party is unacceptable, and the motion will be denied. Insofar as this sole federal claim is the basis for removal of the complaint, the Court

directs the attorneys to confer with Magistrate Judge Schwartz regarding proper dispositive motion practice, which may include summary judgment briefing on the agency issue raised -- but not supported -- in the movant's reply brief. Good cause appearing,

It is on this 31st day of March, 2011,

ORDERED that the motion to dismiss the state claims [D.E. 9] is **denied without prejudice**; and it is further

ORDERED that the motion to dismiss the federal claim in Count IV [D.E.10], is **denied** for the reasons stated above; and it is further

ORDERED that counsel for plaintiff and movant Deutsche Bank confer with Magistrate Judge Patty Schwartz for a schedule consistent with the expectation of the Court that a properly supported dispositive motion be filed and argued to the Court regarding the adequacy of plaintiff's federal claim.

/s/ Katharine S. Hayden

Katharine S. Hayden, U.S.D.J.